Section IV.—Claims to other Forest Rights.

This heading indicates by far the most important branch of the forest settlement; and it will require careful attention, as well as the detailed examination of some important principles which underlie the question of "settling forest rights."

§ 1.—*Recording and admission of claims.*

In the great majority of cases the result of the Settlement Officer's enquiries, and a perusal of the claims which he has received in writing and taken down from the mouth of the applicant, will be to show that rights are claimed in a very general and indefinite way, and without any limit to the number of cattle that may be grazed, or to the quantity of wood that may be cut, and so forth.

The reason of this is to be found in the origin of rights in India. They rarely originated in anything like a formal grant, the terms of which can be referred to. Even when there are orders (somewhat analogous to a grant) passed at a former land revenue settlement (made at a time when forest interests were thought of little importance), the terms will be found almost as general and indefinite as the claims themselves. The "jungle" being largely in excess of the occupied lands, and of the wants of the population, people then went into the nearest wood and took what they wanted; they drove their cattle to the most convenient place where there was grass, and also water and shade. Even where the habits of the people were pastoral, the vast tracts of forest were far in excess of the actual acreage requirements. Nobody then cared how many cattle were grazed, or how much wood was cut. The march of events, however, has put a period to this state of things. The population has increased largely, the forest has become more and more restricted, and it is now a matter of importance to know to what extent such rights have to be provided for. Following the general principle that indefinite rights cannot be made more burdensome to the State than need be, the rights will, in nine cases out of ten, be really rights for the actual personal and domestic wants

of the right-holder. The Settlement Officer has, therefore, the duty of reducing general claims to something definite and tangible.

There are still places where a very general definition may be thought sufficient; but forest management does not look merely to the present nor even to the immediate future. As years go on, the necessity for defining these rights will become greater: and what would have been easy once may become more and more difficult. It is well therefore not to delay. Not only so, but as the settlement of a forest estate involves in some cases paying compensation for rights, it is obvious that the right must be valued for the purpose of awarding its equivalent, and it cannot be valued unless its nature and extent are fully known.

Lastly, in not a few cases, definition and the fixing of number or quantity in the case of an unlimited right, is in itself sufficient to ensure the right-holder's permanent enjoyment of it; since it allays all doubts as to whether the forest can continue to supply such a right or not[9].

[9] The condition of European countries, in respect of forest-rights, is very different to that of India. Rights there exist under much more definite and long-established legal conditions. In Bavaria (Law of 1852, § 27), the owner or right-holder can either of them claim to have an undefined right made definite. Each party bear half the costs of the proceedings if they have to go to a law court, because they are not agreed. In Prussia the rule is similar (*Landrecht* I., Theil, 22, § 235). The subsequent dealings with rights, the commutation (*ablösung*) and the regulation of rights, when exercised in a forest, are matters of the forest law, or of a special law for the extinction of rights. In Italy (Law of 1877, Art. 30), right-holders were allowed two years from the date of the promulgation of the law, within which to claim these rights and get them recorded. A further period of six months' grace was allowed, during which rights could still be claimed, but subject to a fine or penalty. After that, all rights were extinguished (*gli altri s' intenderanno decaduti de qualsiasi diritto*).

The French law (Code For., Art. 61) declares that no right can be recognized which is not already established by an Act of Government, or a judgment, or which was not claimed and recorded before the proper tribunals within two years of the passing of the Code. The Forest Code itself provides in other sections for buying out rights and for regulating them.

The Austrian law (Art. 9, quoted by Grabner) provides that either the owner, or the right-holder, may claim to have a scheme recorded which sets forth the true extent of the right, how it is to be exercised, and within what limits. As the basis of

The Forest Settlement Officer's task is then to find out the real nature and extent of the rights.

§ 2.—*Two Questions involved.*

But there may be two distinct points involved in the settlement of rights: *first*, there is the admission or rejection of the claim, and if admitted, the recording of the claim in some definite shape; *second*, if the right is going to be allowed inside the forest, there is the further question, how far can this be arranged or regulated so as not to injure the forest?

The Indian Act has not separated these two points. The 13th section requires the Settlement Officer, in making his record admitting the claim, to define at once the number and description of cattle, the season during which they graze, the quantity of forest produce and other particulars according to circumstances.

The record of all these matters in full is hardly possible till the further question has been considered, *how these rights are to be provided for consistently with the maintenance of the forest.* The Act, however, appears to suppose that the second point will have been considered *before* any order is made admitting the right at all, and that when such order is made, the recording officer will be in a position to detail the restrictions on the exercise of the right, which are imposed in the interests of prudence, and to secure the fair treatment of the forest[10].

this scheme, a proposal (*entwurf*) is prepared by skilled persons; the objections of either side to this are heard and adjudicated, and the *scheme* for the exercise of the right, as finally adjusted, is authoritatively recorded.

Further, the "Imperial Patent" of 1853 declares (Art. 4) that all rights which are so necessary (or otherwise) that they cannot be got rid of by compensation, must be settled as regards their details, and the place, time and manner of exercise, *so as to make the rights as little burdensome as possible to the forest, consistently with their fair and reasonable enjoyment.*

[10] It is quite possible that a man might show that his ancient customary practice has been to graze as many as 500 cows, so that it is impossible to deny his 'right' to graze 500. But the forest may only contain grass enough to graze 250. In that case the right cannot go beyond the limit of 250.

When the order is ultimately made admitting the rights to exercise *in* the forest, then it is "to the extent admitted" (section 14*c*.).

There are indeed, or may be, certain rules by which an unlimited right is held to be restricted, which have nothing to do with forest conservancy or the state of the forest. The rule that an unlimited right means a right only for the person's own wants, and not for sale, for example, does not depend on any question of the state of the forest. But all laws recognize a power of regulation over and above this, and dependent solely on the question of the state of the forest, and it is hardly convenient to defer the admission or rejection of the claim until all such matters have been considered.

The Burma Act has, therefore, introduced an improvement. It directs the Settlement Officer, in the first instance, to record such particulars as may be necessary to exhibit the claim admitted with reasonable precision—to admit the claim, as, in fact, it has been previously exercised, supposing the forest can bear it. This gives him the opportunity of determining at this stage such matters as the duration of the right, the power to sell the produce and so forth, which can be ascertained at once without reference to the forest question. The adjustment of the exact number of cattle to be allowed, the quantity of wood or other produce to be granted, and some other matters of detail, are left to be further adjusted and recorded when it has been determined that the right must be left to be exercised within the "reserved" forest. For, it may be found possible to provide for the right outside (by means of a portion excluded from) the proposed forest, and in that case there would be no object in minutely regulating it, though of course the right must be made reasonably definite and certain by record. The right-holders have it on their own responsibility to exercise their rights with moderation and prudence, or the place granted them for the enjoyment of their right will cease to give them what they want.